

THE ORISSA FOREST ACT, 1972¹
(ACT 14 OF 1972)²

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*An Act to consolidate and amend the laws relating to the
protection and management afforests in the State*

Be it enacted by the Legislature of the State of Orissa in the Twenty-third Year of the Republic of India, as follows :—

CHAPTER I
Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Orissa Forest Act, 1972.

- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force at once.

2. Definitions.— In this Act, unless the context otherwise requires—

- (a) "cattle" means cows, oxen, bulls, and calves and includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, kids and such other kind of animals as the State Government may, by notification, specify;
- (b) "Chief Conservator of Forests" means the Forest Officer in charge of all the forests in the State who supervises and controls the work of other Forest Officers;
- (c) "Conservator of Forests" means a Forest Officer in charge of a Forest Circle;
- (d) "Divisional Forest Officer" means any Forest Officer in charge of any forest Division;
- (e) "forest offence" means an offence punishable under this Act or under the rules and includes the abatement of a forest offence;
- (f) "forest officer" means any person appointed by the State Government or by any officer empowered by them in this behalf—
 - (i) to be a Chief Conservator of Forests, Conservator of Forests, Deputy Conservator of Forests, Assistant Conservator of Forests, Forest Ranger, Deputy Ranger, Forester or Forest Guard; and
 - (ii) such other persons who are notified by the State Government to perform any function of a Forest Officer under this Act or any rule or order made hereunder but does not include a Forest Settlement Officer;
- (g) "forest produce" includes—
 - (i) the following whether found in, or bought from a forest or not, that is to say—
 - (a) timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, Tussar Cocoon, lac, gums, roots of Patal Garuda, *Mahua* flowers,

1 For the Bill see Orissa Gazette, Extraordinary, dated the 23rd July 1971 (908) and Jor Select Committee Report see Orissa Gazette, Extraordinary, dated the 3rd January, 1972 (5-A).

2 The Act received the assent of the President on the 29th June, 1972, and published in the Orissa Gazette, Extraordinary, dated 14th July, 1972.

- mohua seeds, myrabolans, kendu leaves sandalwood, tamarind, hill broom, siali leaves, siali fibres, sal seeds;
- (b) wild animals and wild birds, skins, tusks, horns, bones and all other parts or produce of wild life; and
- (c) such other produce as may be notified by the State Government; and
- (ii) the following when found in or brought from a forest, that is to say-
 - (a) trees and leaves, flowers and fruits and all other parts or produce of trees not hereinbefore mentioned;
 - (b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants;
 - (c) honey, wax and arrowroot;
 - (d) peat, surface oil, rock, sand and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);
- (h) "owner" in relation to a forest includes a mortgagee in possession, lessee or other person having right to the possession of and enjoyment of the forest;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "Range Officer" means a forest officer in charge of a forest range;
- (k) "river" includes streams, canals, backwaters, creeks and other channels, natural or artificial;
- (l) "rule" means any rule made under this Act;
- (m) "sandalwood" means the wood derived out of any part of Chandan tree and includes chips, dust or powder of such wood;
- (n) "timber" includes trees fallen or felled and all wood cut-up or sawn; and
- (o) "tree" includes palms, bamboos, stumps, brushwoods and canes.

CHAPTER II

Of Reserved Forest

3. Power to reserve forests.—The State Government may constitute any land which is the property of Government, or over which the Government have proprietary rights a reserved forest in the manner hereinafter provided.

4. Notification by State Government.—(1) Whenever it is proposed to constitute any land a reserved forest, the State Government shall issue a notification in the *official gazette*—

- (a) declaring that it is proposed to constitute such land a reserve forest;
- (b) specifying, as nearly as possible, the situation and limits of such lands; and
- (c) appointing an officer (hereinafter called "The Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights or privileges alleged to exist in favour of any person in or over any land comprised within such limits, or in or any forest produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of Cl. (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under Cl. (c) of sub-section (1) shall ordinarily be a person not holding any forest office except that of a Forest Settlement Officer.

(3) The Divisional Forest Officer or an forest Officer not below the rank of a Range Officer authorised by him in that behalf may represent the Forest Department at the enquiry conducted under this Chapter.

5. Bar to accrual of forest rights and bar of suits.—(1) After the issue of a notification under Sec. 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State Government or some person in whom such right was vested when the notification was issued; and no fresh clearings or breaking of land for cultivation or for any other purposes or construction of shed or other structures shall be made in such land except in accordance with such rules as may be made by the State Government in that behalf.

(2) Save as otherwise provided in this Act no Civil Court shall between the dates of publication of the notification under Sec. 4 and of the notification to be issued under Sec. 21, entertain any suit to establish any right in or over any land or to the forest produce of any land included in the notification published under Sec. 4.

6. Proclamation by Forest Settlement Officer.—When a notification has been issued under Sec. 4, the Forest Settlement Officer shall, in the prescribed manner, publish in Oriya in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest,
- (b) explaining the consequences which, as hereinafter provided will ensue on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Sec. 4 or Sec. 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

7. Inquiry by the Forest Settlement Officer.—(1) The Forest Settlement Officer shall take down in writing all statements made under Sec. 6 and shall at some convenient place in the locality inquire into all claims duly preferred under that section, and the existence of any rights mentioned in Sec. 4 or Sec. 5 and not claimed under Sec. 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

(2) The Forest Settlement Officer shall also record any representation which the Forest Officer, if any, representing the Forest Department under sub-section (3) of Sec. 4 or the Divisional Forest Officer may make in respect of any such objection or claim.

8. Powers of Forest Settlement Officer.—For the purpose of such enquiry, the Forest Settlement Officer may exercise the following powers, that is to say—

- (a) power to enter or to authorise any person to enter upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.—Rights in respect of which no claim has been preferred under Sec. 6 and of the existence of which no knowledge has been acquired by inquiry under Sec. 7, shall be extinguished, unless before, the publication of the notification under Sec. 21. the person claiming them satisfies the Forest Settlement

Officer that he had sufficient cause for not preferring such claim within the period fixed under Sec. 6.

10. Claims relating to practice of shifting cultivation.—(1) Claims relating to the practice of shifting cultivation in any land notified under Sec. 4 shall not be admitted but if the Forest Settlement Officer considers that some portion of the land under settlement needs to be excluded to provide sufficient land for cultivation he may, after considering the objections of the Forest Officer, if any, representing the Forest Department under sub-section (3) of Sec. 4 or the Divisional Forest Officer, make a report to the State Government containing his recommendations for alteration of the limits of the land.

(2) The State Government may, after considering the recommendations so made, sanction the alteration proposed by the Forest Settlement Officer either in whole or with such modifications as they deem fit and thereon the Forest Settlement Officer shall pass an order altering the limits of the land as sanctioned by the State Government.

(3) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction, and abolition by the State Government.

11. Power to acquire land over which right is claimed.—(1) In the case of a claim to a right in or over any land, other than a right-of-way or right of pasture, or a right to forest produce or an watercourse or to use of water the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part after considering the particulars of such claims and the objection of the Forest Officer, if any, representing the Forest Department under sub-section (3) of Sec. 4, or the Divisional Forest Officer.

(2) If such claim is admitted in whole or in part, the Forest Settlement Officer shall either—

- (i) exclude such land from the limits of the proposed forest;
- (ii) come to an agreement with the owner thereof for the surrender of his rights; or
- (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (1 of 1984).

(3) For the purpose of such acquisition—

- (a) the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (1 of 1894);
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under Sec. 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant or with the consent of both parties, may award compensation in the form of land, or partly in the form of land and partly in money.

(4) The Forest Settlement Officer shall serve a copy of every order passed under this section on the claimant and also on the Forest Officer who attended the enquiry under sub-section (3) of Sec. 4 or if no such officer attended, on the Divisional Forest Officer.

12. Claims to right of way, right to water course or to use of water, etc.- (1) In the case of a claim to right of way, right to water course or to use of water the Forest

Settlement Officer shall after considering the objections of the Forest Officer, if any, representing the Forest Department under sub-section (3) of Sec. 4 or the Divisional Forest Officer either come to an agreement with the claimant for the surrender of the right or pass an order for the continuance of the exercise of such right subject to such conditions as may be agreed upon between the Forest Department and the claimant or where no such agreement is reached, as the Forest Settlement Officer may impose.

(2) In the case of claims to right of way, right to water course or to use of water, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part after considering the objections of the Forest Officer representing the Forest Department under sub-section (3) of section 4 or of the Divisional Forest Officer.

(3) A copy of every order passed under this section shall be served on the claimant by the Forest Settlement Officer and another copy shall be forwarded to the Forest Officer who attended the enquiry or if no such officer attended, to the Divisional Forest Officer.

13. Record to be made by the Forest Settlement Officer.—The Forest Settlement Officer, when passing any order under Sec. 12, shall record in as precise terms as possible and so far as may be practicable—

- (a) the name, father's name, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields, if any, and the designation and position of all buildings, if any, in respect of which the exercise of such rights is claimed.

14. Record where he admits claims.—If the Forest Settlement Officer admits in whole or in part any claim under sub-section (2) of Sec. 12, he/shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is, from time to time, entitled to graze in the forest, the season during which such pasture is admitted, the quantity of timber and other forest produce which he is, from time to time, authorised to take or receive, and such other particulars as the case may require. He shall further record whether the timber or other forest produce obtained on such authorisation may be sold or bartered.

15. Exercise of rights admitted.—(1) After making such records the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For the said purpose the Forest Settlement Officer may—

- (a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient for the purposes of such claimants, and make an order conferring upon them a right of pasture or to forest produce, as the case may be, to the extent so admitted; or
- (b) so alter the limits of the proposed forest as to exclude forest land of sufficient extent, and in a locality reasonably convenient for the purposes of the claimants; or
- (c) make an order continuing in favour or such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, during such seasons and within such portions of the proposed forests as he may fix and subject to such rules as may be made in this behalf.

(3) A copy of every order passed under this section shall be served on the claimants by the Forest Settlement Officer and another copy shall be forwarded to the Forest Officer who attended the enquiry or if no such officer attended, to the Divisional Forest Officer.

16. Commutation of rights —If on the representation of the Divisional Forest Officer the Forest Settlement Officer is satisfied that the exercise of any private right is inconsistent with the maintenance, preservation or development of a reserve forest, he shall proceed to acquire such right and shall subject to such rules as the State Government may make in this behalf, commute such rights by the payment to such persons of a sum of money in lieu thereof or by the grant of land, or in such other manner as he thinks fit.

17. Appeal from orders passed under Sees. 11, 12, 15 or 16 —Any person who has made a claim under this Act, or any Forest Officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under Sees. 11, 12, 15 or 16, present an appeal from such order to the Collector of the district who may dispose of the appeal himself or may transfer the same to the Additional District Magistrate for disposal.

18. Appeal under Sec. 17—(1) Every appeal under Sec. 17 shall be made by a memorandum in writing and may be delivered to the Forest Settlement Officer, who shall forward it forthwith to the authority competent to hear the same.

(2) The procedure for filing and disposal of appeals shall be the same as is provided under Order XLI of the Code of Civil Procedure, 1908 (5 of 1908).

19. Power of revision— (1) The Board of Revenue may, on an application made in that behalf by any person aggrieved by an appellate order under Sec. 18 within three months from the date of the order, confirm, modify or set aside such order :

Provided that no orders under this sub-section shall be made without giving the parties concerned a reasonable opportunity of being heard.

(2) The Board of Revenue may, by order in writing and subject to such conditions, as may be specified therein, delegate its powers under this section to any officer not below in rank to the Revenue Divisional Commissioner and may in like manner withdraw the powers so delegated.

20. Pleaders.—The State Government or any person who has made a claim under this Act, may appoint any person to appear, plead and act on their or his behalf before the Forest Settlement Officer or the appellate or revisional authority in the course of any inquiry, appeal or revision under this Act.

21. Notification declaring forest reserved.— (1) When the following events have occurred, namely :—

(a) the period fixed under Sec. 6 for preferring claims has elapsed, and all claims, if any, made under that section or Sec. 9 have been disposed of by the Forest Settlement Officer;

(b) if any such claims have been made, the period limited by Sec. 17 for preferring appeals from the orders passed on such claims has elapsed, and all appeals, if any, presented within such period have been disposed of by the

- appellate authority;
- (c) if any such appeals have been presented, the period limited by Sec. 19 for making an application for revision of the appellate order has elapsed, and all applications, if any, made within such period have been disposed of by the revisional authority; and
- (d) lands, if any, to be included in the proposed forest, which the Forest Settlement Officer has under Sec. 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the State Government under section 16 of that Act.

the State Government may publish a notification specifying according to boundary marks erected or otherwise, the limit of the forest which is to be reserved, and declaring the same to be reserved with effect from a date to be specified in the notification.

(2) From the date so specified such forest shall be deemed to be a reserved forest.

³(3) Production of an authenticated copy of a notification published under sub-section (1) shall be conclusive proof that the forest, the limits whereof have specified therein, is a reserved forest.]

22. Publication of translation of such notification in neighbourhood of forests.—The Divisional Forest Officer shall, before the date specified in the notification issued under Sec. 21, cause a translation thereof into Oriya to be published at a conspicuous place in every town and village in the neighbourhood of the forest and also in such other manner as may be prescribed.

23. Power to revise arrangement made under Sec. 15 or Sec. 18. — The State Government may, at any time after the publication of any notification under Sec. 21, revise any arrangement made under Sec. 15, Sec. 18, or Sec. 19, and may for this purpose rescind or modify any order made under Sec. 15, Sec. 18, or Sec. 19, and direct that any one of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under Sec. 12 be commuted under Sec. 16.

Provided that no order under this section shall be made without giving the parties concerned reasonable opportunity of being heard.

24. No right to be acquired over reserved forest except as herein provided. — No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the State Government or some person in whom such right was vested when the notification under Sec. 21 was issued.

25. Rights not to be alienated without sanction. — (1) Notwithstanding anything contained in Sec. 24, no right continued under Cl. (c) of sub-section (2) of Sec. 15, shall be alienated by way of grant, sale, lease, mortgage or otherwise without the sanction of the State Government :

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated alongwith such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under Sec. 14.

3 *Ins. by Orissa Act 9 of 1983.*

26. Power to stop ways and water courses in reserved forests. — The Divisional Forest Officer, may, in the interests of the general public and with the previous sanction of the State Government or of any officer duly authorised by them in this behalf, close any public or private way or water course or stop the use of water in a reserved forest provided that a substitute for the way or water course so closed or, as the case may be, an alternative arrangement for the use of water so stopped, which the State Government deems to be reasonably convenient, already exists, or has been provided for or constructed by the Divisional Forest Officer in lieu thereof.

27. Offences. — (1) Any person who —

(a) makes any fresh clearing or causes breaking of land which is prohibited under Sec. 5;

(b) sets fire to a reserved forest or to a forest land in respect of which a notification under Sec. 4 has been issued or in contravention of any rule made by the State Government in this behalf, kindles any fire in such forest or leaves any fire burning in such manner as to endanger such forest or forest land; or

(c) in a reserved forest kindles, keeps, or carries any fire except at such season as the Forest Officer may notify in this behalf,

shall be punishable with imprisonment for a term which may extend to six months⁴[and with fine] which may extend to five hundred rupees⁵* * *].

(2) Any person who in a reserved forest—

(a) trespasses or pastures cattle or permits cattle to trespass;

(b) causes any damage by negligence in felling any tree or cutting or dragging any timber or removing any forest produce,

shall be punishable with fine which may extend to one thousand rupees in addition to such compensation for the damage done to the forest, which In no case shall be less than the value of the property damaged, as the convicting Court may direct to be paid.

(3) Any person who in a reserved forest —

(a) fells, girdles, lops, taps or burns any tree or plant or strips off the bark or leaves from or otherwise damages the same or causes damage to any forest produce;

(b) quarries stone, burns lime or charcoal or collects, subject to manufacturing process or removes any forest produce;

(c) clears or breaks up any land for cultivation or for any other purpose, or cultivates or attempts to cultivate any land in any manner or puts up any sheds or other structure; or

(d) in contravention of any rule made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares,

shall be punishable with imprisonment for a term which may extend to two years⁶[and with fine] which may extend to five thousand rupees⁷[* * *].

(4) When a person is convicted for an offence under Cl. (a) of sub-section (1) or Cl. (c) of sub-section (3) the Court shall order eviction of the offender from the land in relation to which the offence has been committed and on such order being made all

4 *Subs, by Orissa Act 9 of 1983. for the words "and with fine".*

5 *Deleted by ibid*

6 *Subs, by Orissa Act 9 of 1983 for the word "or with fine".*

7 *Deleted by ibid.*

sheds or structures on such land shall be demolished and if the Court so orders the crop if any, standing on the land shall be seized and confiscated to the State Government.

(5) Orders passed and actions to be taken under sub-section (4) may be executed by a Police Officer not below the rank of a Sub-Inspector or a Forest Officer not below the rank of a Range Officer as the Court may direct.

(6) Nothing in this section shall be deemed to prohibit —

(a) any act done by permission in writing of the Divisional Forest Officer or any officer authorised by him in that behalf or under any rule made by State Government; or

(b) the exercise of any right continued under Cl. (c) of sub-section (2) of Sec. 15, or created by grant or contract in writing made by or on behalf of the State Government as is referred to in Sec. 24.

28. Suspension of rights in reserved forests. —Whenever in a reserved forest—

(a) fire is caused wilfully or by gross negligence, or

(b) theft of forest produce occurs and such theft is, in the opinion of the State Government on such a scale as to be likely to imperil the future yield of such forest,

the State Government may, on the recommendation of the Collector of the district, direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest produce shall be suspended for such period as they may think fit :

Provided that before making any recommendation to the State Government, the Collector shall give the persons concerned a reasonable opportunity of being heard.

29. Power "to declare forest no longer reserved. — (1) The State Government may, by notification, direct that with effect from such date as may be specified therein any forest declared to be a reserved forest under this Act or any portion thereof shall cease to be a reserved forest.

(2) With effect from the aforesaid date such forest or portion of the forest shall cease to be reserved; but the rights therein, if any, which have been extinguished shall not revive in consequence of such cessation.

(3) Whenever any reserved forest or any portion thereof ceases to be a reserved forest by virtue of a notification issued under sub-section (1) the State Government shall, as far as practicable, constitute other lands equal in area to the reserved forest so notified, to be a reserved forest in accordance with the provisions of this Chapter.

CHAPTER III Of Village Forests

30. Constitution of village forests.—(1) The State Government may, by notification, constitute any land at their disposal to be a village forest for the benefit of any village community or group of village communities, and may in like manner vary or cancel any such notification.

(2) Every such notification shall specify the limits of such village forest.

Explanation.—"Land at the disposal of Government" includes all unoccupied land, all temporarily occupied land or occupied without permission, whether assessed or unassessed, and all communal forests but does not include land recorded in the name of any private person or institution in the record-of-rights in force which is prepared and maintained or is deemed to be prepared and maintained under the Orissa Survey

and Settlement Act, 1958 (Orissa Act 1 of 1959).

31. Power to make rules for village forests.—(1) The State Government may make rules for regulating the management, of village forests and for prescribing the conditions under which the community or group of communities for the benefit of which any such village forest is constituted may be provided with forest produce or with pasture, and their duties in respect of the protection and improvement of such forest.

(2) The State Government may, by such rules, declare all or any of the provisions of Chapter II to be applicable to village forests.

32. Inquiry into and settlement of rights.—All claims to any rights, other than the rights of the village community or group of village communities for the benefit of which such village forest is constituted, shall be inquired into, recorded and provided for in such manner as may be prescribed.

CHAPTER IV Of Protected Forests

33. Protected forests.—(1) The State Government may, by notification, declare the provisions of this Chapter applicable to any land which is not included in a reserved forest, but which is the property of Government, or over which the Government have proprietary rights.

(2) The lands comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be issued unless the nature and extent of the rights of Government and of private persons and village communities in or over the land comprised therein have been inquired and recorded at a survey or settlement have been inquired into and recorded at a survey or settlement, or in such other manner as may be prescribed and every such record shall be presumed to be correct until the contrary is proved:

Provided that, if in the case of any land, the State Government are of the opinion that the inquiry and recording as aforesaid are likely to occupy such length of time as in the meantime to endanger the rights of Government, they may, pending "such inquiry and recording, declare such land to be a protected forest, but so as not to abridge or affect" any existing rights of individuals or communities,

(4) Lands at the disposal of Government to which the provisions contained in Chapter III of the Madras Forest Act, 1882 (Madras Act 5 of 1882) were applicable immediately prior to the coming into force of this Act shall be deemed to be "protected forest" under this Act.

34. Power to issue notification reserving trees, etc. — The State Government may, by notification, —

- (a) declare any trees, or class of trees in a protected forest to be reserved from date to be specified in the notification;
- (b) prohibit from a date to be specified as aforesaid the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process or removal of any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle; or for any other purpose, of any land in any such forest;

- (c) declare that any portion of such forest as may be specified in the notification shall be closed to grazing and removal of any forest produce for such term as the State Government think fit for the plantation and natural growth of the forest:

Provided that in making a declaration under Cl. (c), the State Government shall have due regard to the grazing facility of cattle.

35. Publication or translation of such notification in neighbourhood. — The Divisional Forest Officer shall cause a translation into Oriya of every notification issued under Sec. 34 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

36. Powers to make rules for protected forests. — The State Government may make rules to control and regulate the following matters, namely:-

- (a) the cutting, sawing, conservation and removal of trees and timber, and the collection, manufacture and removal of forest produce, from protected forests;
- (b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest produce for their own use, and the production and return of such licences by such persons;
- (c) the granting of licences to persons for felling or removing trees or timber or other forest produce from such forests for the purposes of trade, and the production and return of such licences by such persons;
- (d) the payments, if any, to be made by them in respect of such trees, timber and other forest produce, and the places where such payment shall be made;
- (e) the other payments, if any, to be made by them and other forest produce, and the places where such payment shall be made;
- (f) the examination of forest produce passing out of such forests; —
- (g) the alienation, clearing and breaking up of land for cultivation or purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved under Sec. 34;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, poisoning water, setting traps or snares and collection of wild life in such forests;
- (k) the protection and management of any portion of a forest notified under Sec. 34; and
- (l) the exercise of rights referred to in Sec. 33.

37. Penalties for acts in contravention of notification under Sec. 34 rules or of under Sec. 36. — (1) Any person who —

- (a) fells, girdles, lops, taps or burns any tree reserved under Sec. 34, or strips off the bark or leaves from, or otherwise damages, any such tree;
- (b) contrary to any prohibition under Sec. 34, quarries any stone, or burns any lime or charcoal, or collects, subject to any manufacturing process, or removes any forest produce;
- (c) contrary to any prohibition under Sec. 34, breaks up or clears for cultivation or any other purpose any land in any protected forest or cultivates or attempts to cultivate any such land in any manner;
- (d) sets fire to such forest or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under Sec. 34,

whether standing, fallen or felled, or to any portion of such forest notified under the said section;

(e) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(f) permits cattle to damage any such tree; or

(g) infringes any rule made under Sec. 36;

shall be punishable with imprisonment for a term which may extend to one year⁸[and with fine] which may extend to two thousand rupees or with both and shall also be liable to pay such compensation not being less than the value of the damage caused to the forest as the convicting Court may direct to be paid.

(2) When a person is convicted of an offence under Cl. (c) of sub-section (1) the Court shall order eviction of the offender from the forest and or the land in relation to which the offence has been committed and on such order being made all sheds or structures on such land shall be demolished and if the Court so orders the crop, if any, standing on the land shall be seized and confiscated to the State Government.

(3) The order of eviction may be executed by a police officer not below the rank of Sub-Inspector or a Forest Officer not below the rank of a Range Officer or a Revenue Officer not below the rank of a Revenue Inspector as the Court may direct.

(4) Whenever in a protected forest—

(a) fire is caused wilfully or by gross negligence; or

(b) theft of forest produce occurs and such theft is in the opinion of the State Government on such a scale as to be likely to imperil the future yield of such forest,

the State Government may, on the recommendation of the Collector of the district and notwithstanding that any penalty has been inflicted under this section or under any other law for any act referred to in Cl. (a) or Cl. (b), direct that in such forest or any portion thereof the exercise of any right of pasture or to forest produce shall be suspended for such period as they think fit:

Provided that before making any recommendation to the State Government, the Collector shall give the persons concerned a reasonable opportunity of being heard.

38. Nothing in this Chapter to prohibit acts done in certain cases.—

Nothing in this Chapter shall be deemed to prohibit acts done with the permission in writing of the Forest Officer who is authorised by the Chief Conservator of Forests to accord such permission or done in accordance with rules made under Sec. 36 or, except as regards any portion of a forest notified under Sec. 34, or as regards any rights the exercise of which has been suspended under Sec. 37 or done in the exercise of any right recorded under Sec. 33.

CHAPTER V

Of the Control Over Forests and Lands not being the Property of Government or over which Government have Joint Interest

39. Protection of Forest for special purposes.—(1) The State Government by notification, regulate or prohibit in any forest or waste land—

(a) the breaking up or clearing of land for cultivation;

(b) the pasturing of cattle; or

(c) setting fire to or clearing of the vegetation, where such regulation or

⁸ Subs, by Orissa Act 9 of 1983, for the words "or with fine".

prohibition appears necessary for any of the following purposes, namely :-

- (i) for protection against storms, winds, rolling stones, floods avalanches;
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys or hilly tracts, the prevention of landslips or of the formation of and torrents or the protection of land against erosion or the thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers, tanks, reservoir and irrigation projects;
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of public health and of places of worship.

(2) The State Government may, for any such purpose, construct at its own expense in or upon any forest or waste land, such work as they think fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification shall not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf by the State Government and have been considered by the State Government.

40. Power to assume management of forests.—(1) In case of neglect of or wilful disobedience to any regulation made or prohibition imposed under Sec. 39; or If the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest Officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land be paid to the said owner.

41. Acquisition of forests in certain cases.—(1) In any case under this Chapter in which the State Government consider that, in lieu of placing the forest or land the control of a Forest Officer the same should betaken on lease or acquired for public purposes, the State Government may proceed to take on lease on agreed terms or to 13 acquire it in the manner provided under the Land Acquisition Act, 1894 (10 of 1894).

(2) The owner of any forest or land comprised in any notification under Sec. 39 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes and the State Government shall acquire such forest or land accordingly.

42. Prohibition of cutting fruit-bearing trees.—The State Government may, by notification, from time to time, prohibit the cutting of fruit-bearing trees specified in the notification which are standing on any land (other than land which is the property of Government or over which the Government have proprietary rights) and the cutting of which is likely to lead to a fall in agricultural or industrial production.

43. Protection of forests, at request of owners. — (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or

conservation of forests thereon, represent in writing to the State Government their desire —

- (a) that such land be managed on their behalf by the Forest Officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification, apply to such land such provisions of this Act as they think suitable to the circumstances thereof and as may be desired by the applicants.

44. Management of forests the joint property of Government and other persons. — (1) If the State Government and any person be jointly interested in any forest or waste land or in the whole or any part of the produce thereof, the State Government may either —

- (a) undertake the management of such forests, waste land or produce accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forests, waste land or produce by the person so Jointly interested as they deem necessary for the management thereof and the interest of all parties therein.

(2) When the State Government undertake under Cl. (a) of sub-section (1) the management of any forest, waste land or produce, they may, by notification, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste land or produce, and thereupon such provisions shall apply accordingly.

CHAPTER VI Of the Control of Timber and other Forest Produce in Transit or Possession

45. Power to make rules to regulate transit of forest produce.— (1) The control of all rivers and their banks as regards; the floating of timber, as well as the control of all timber produce in transit by land or water shall be vested in the State Government, and they may make rules to regulate the transit and possession of all timber and other forest produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may —

- (a) prescribe the routes by which alone timber or other forest produce may be imported, exported or moved into, from or within the State;
- (b) prohibit the import or export or moving of such timber or other forest produce without a pass from an officer duly authorised to issue the same and otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof or on account of any fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;
- (e) provide for the establishment and regulation of depots to which such timber or other forest produce shall be taken by the person in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it and the conditions under which such timber or other

- produce shall be brought to, stored at and removed from such depots;
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, the throwing of grass, brushwood branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
 - (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;
 - (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw mills, or saw pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same or the possession or carrying of marking hammers or other implements used for marking timber;
 - (i) regulate the use of property marks for timber, and the registration of such marks, prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration;
 - (j) provide for maintenance of accounts of timber received at or despatched from the saw mills;
 - (k) regulate the possession and transit of valuable produce like sandalwood, tusks and wild life trophies.
- (3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area.

46. Penalty for breach of rules made under Sec. 45.— (1) In making any rule under Sec. 45 the State Government may provide that a breach thereof shall be punishable with imprisonment which may extend to one year ⁹[and with fine] which may extend to one thousand rupees ¹⁰[* * *].

(2) Such rules may provide that penalties which are double of those mentioned in offence is committed after sunset and offender has been previously convicted of a like offence.

47. Government and Forest Officers not liable for damage to forest produce at depot.—The State Government shall not be responsible for any loss or damage *| which may occur in respect of any timber or other forest produce while at a depot established under a rule made under Sec. 45, or while detained elsewhere, for the purposes of this Act; and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

48. All persons bound to aid in case of accident at depot.—In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the State Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger or securing such property from damage or loss.

⁹ Subs, by Orissa Act 9 of 1983, for the words "or with fine".

¹⁰ Deleted by *ibid*.

CHAPTER VII Of the Collection of Drift and Stranded Timber

49. Certain kinds of timber to be deemed property of Government until title thereto is proved and may be collected accordingly.—(1) The following shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto as provided in this Chapter, namely :—

- (a) all timber found adrift, breached, stranded or sunk;
- (b) all wood or timber bearing marks which have not been registered in accordance with the rules made under Sec. 45, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and
- (c) in such areas as the State Government may direct, all unmarked wood and timber.

(2) Such timber may be collected by any Forest Officer or other person entitled to collect the same by virtue of any rule made under Sec. 55, and may be brought to any depot which the Divisional Forest Officer may specify as a depot for the reception of drift timber and the officer or person so collecting shall forthwith make a report to the Divisional Forest Officer,

(3) The State Government may, by notification, exempt any class of timber from the provisions of this section.

50. Notice to claimants of drift timber.— Public notice shall, from time to time, be given by the Divisional Forest Officer of timber collected under Sec. 49 and every such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer within a period not less than two months from the date of such notice, a written statement of such claim.

51. Procedure on claim preferred to such timber.— (1) When any such statement is presented as aforesaid, the Divisional Forest Officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Divisional Forest Officer may either make an order declaring the person entitled to the timber and deliver the same to him or may refer the claimant to the Civil Court having jurisdiction and retain the timber pending the receipt of an order from any such court for its disposal:

Provided that no such delivery of timber shall be made under this sub-section until the expiry of a period of three months from the date of the order made by the Divisional Forest Officer.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him, but no person shall be entitled to any compensation or costs against the State Government, or against any Forest Officer, on account of such rejection, or the retention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to any process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought as provided in this section.

52. Disposal of unclaimed timber.—If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the

period fixed by the notice issued under Sec. 50, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the period fixed by Sec. 51, the ownership of such timber shall vest in the State Government, or when such timber has been delivered to another person under Sec. 51, in such other person free from all encumbrances not created by him.

53. Government and its officers not liable for damage to such timber.—The State Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under Sec. 49, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

54. Payments to be made by claimant before timber is delivered to him.—No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Divisional Forest Officer or other persons entitled to receive it, such sum on account thereof as may be due under any rule made under Sec. 55.

55. Power to make rules and prescribe penalties.—(1) The State Government may make rules to regulate the following matters, namely :—

- (a) the salving, collection and disposal of all timber mentioned in Sec. 49;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

(2) In making any rule under this section the State Government may provide that a breach thereof shall be punishable with imprisonment which may extend to one year¹¹[and with fine] which may extend to one thousand rupees,¹²[* * *].

¹³[CHAPTER VII-A Provisions Relating to Sandalwood

55-A. Sandal trees to be exclusive property of State Government.—(1) Notwithstanding anything to the contrary contained in any law, contract, grant or other instructions but save as provided in Sec. 55-B.-

- (i) all sandal trees which may grow in any land on or after the date of commencement of the Orissa Forest (Amendment) Act, 1990; and
- (ii) all sandal trees existing on any land prior to the commencement of the Orissa Forest (Amendment) Act, 1990,

shall be the exclusive property of the State Government.

(2) Where in any proceedings taken for this Act, a question arises as to whether any sandal wood is the property of the State Government, it shall, until the contrary is proved, presumed to be the part of a sandal trees which was the exclusive property of the State Government under sub-section (1), and in the case of any prosecution the burden of proving the contrary shall lie on the accused.

11 *Subs. by Orissa Act 9 of 1983. for the words "or with fine".*

12 *Deleted by ibid.*

13 *Ins. by Orissa Act 2 of 1991.*

55-B. Disposal of sandal wood belonging to private persons- (1) Any person who by terms of his title to the land, grants or by judicial decision or otherwise, was prior to the commencement of the Orissa Forest (Amendment) Act, 1990, legally entitled to the sandal trees in his lands, shall not fell or sell any such sandal trees.

(2) The Divisional Forest Officer concerned may cause any such sandal tree or trees occurring on such lands to be cut or uprooted and sold and in the event of such sale, the sale proceeds thereof shall be paid to the person referred to in sub-section (1) after deducting the expenses incurred for felling and selling the tree and such payment shall be deemed to have been made towards the full satisfaction of compensation for that tree.

55-C. Regulation, sale and manufacture of sandal wood and sandal wood oil.-

(1) No person shall possess, store or sell or attempt to store or sell sandal wood or disintegrate sandal wood in mills or by other contrivance, manufacture or distil or attempt manufacture or distil oil from sandal wood, or sell oil extracted from sandal wood, or re-distil, refine or sell oil extracted from sandal wood, except under a license obtained from a Forest Officer empowered in this behalf on payment of such fees and subject to such restrictions and conditions as may be prescribed:

Provided that no such licence shall be necessary for possession of sandal wood upto two kilograms for *bona fide* domestic use.

(2) Whoever contravenes the provisions of sub-section (1) shall on conviction, be punishable with imprisonment for a term which may extend to *three years* and with fine which may extend to ten thousand rupees :

Provided that—

(i) in the case of first offence, the term of imprisonment shall not be less than one year and the amount of fine shall not be less than three thousand rupees; and

(ii) in the case of a second or subsequent offence, the term of imprisonment shall not be less than two years and the amount of fine shall not be less than five thousand rupees (*sic*).

55-D. Responsibility of occupants and holders of land for preservation of sandal trees. — (1) Every occupant or holder of land shall be responsible for the due preservation of all sandal trees growing thereon, which are the exclusive property of the State Government, and shall, in the event of any damage to any such tree from whatsoever cause or its theft, report such fact to the nearest Forest Officer or Police Officer as soon as possible.

(2) Any occupant or holder who fails to report any such case of damage or theft as aforesaid to such Officer and unless adjudged by a Forest Officer not lower in rank than the Divisional Forest Officer that such damage or theft was not caused either by his own act or by any neglect or default on his part or by any other person at his instigation or with his connivance shall, notwithstanding any other penalty to which he may be liable, be liable to pay the State Government such compensation on account of such damage or theft as the Divisional Forest Officer deem reasonable.

Explanation. — The word "damage" used in this section includes the lopping of branches of the tree.

55-E. Penalty for offence in regard to sandal wood.- In any case of a forest offence having reference to the cutting, uprooting or removal or damage to a sandal

tree or any part of a sandal tree belonging to the government, the offender shall, on conviction, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to three years and with fine which may extend to ten thousand rupees).

CHAPTER VIII Penalties and Procedure

¹⁴ [¹⁵[55-AA]. **Minimum punishment to be imposed.** — Unless for sufficient reasons to be recorded in writing, the Court passing an order of conviction for an offence under this Act or the rules made thereunder (other than an offence under sub-section (2) of Sec. 27 or under Sec. 83) imposes a lesser punishment, the minimum punishment to be imposed on such conviction shall be imprisonment for a period of two months together with a fine of an amount equal to fifty per cent, of the maximum fine provided for the offence.]

56. Seizure of property liable to confiscation. — (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place, on such property a mark indicating that the same has been so seized and shall as soon as may be, except where the offender agrees in writing to get the offence compounded, ¹⁶[either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or] make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest Officer.

¹⁷[(2-a) Where an authorised officer seizes any forest produce under sub-section (1) or where any such forest-produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, boats, vehicles or cattle used in committing such offence.

(2-b) No order confiscating any property shall be made under sub-section (2-a) unless the person from whom the property is seized is given —

- (a) a notice in writing informing him of the grounds, on which it is proposed to confiscate such property;
 - (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and
 - (c) a reasonable opportunity of being heard in the manner.
- (2-c) Without prejudice to the provisions of sub-section (2-b), no order of

14 *Ins. by Orissa Act 9 of 1983.*

15 *Re-numbered by Orissa Act 2 of 1991.*

16 *Ins. by Orissa Act 9 of 1983.*

17 *Ins. by idid.*

confiscation under sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person incharge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-d) Any Forest Officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation by the authorised officer under sub-section (2-a), either *suo motu* or on application, call for and examine the records of the case and may make such inquiry to be made and pass such orders as he may think fit:

Provided, that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-e) Any person aggrieved by an order passed under sub-section (2-d) or sub-section (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized, and the District Judge shall after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final.]

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

Explanation.—For the purposes of this section and Sec. 59, cattle shall not include buffaloes, bulls, cows, calves and oxen.

57. Power to release property seized under Sec. 56. — Any Forest Officer of a Officer rank not inferior to that of a Range Officer, who or whose subordinate has seized any tools, ropes, chains, boats, vehicles or cattle under Sec.56¹⁸[and where a report of such seizure has been made to the Magistrate having jurisdiction to try the offence on account of which the seizure is made.

58. Action after seizure.— Upon the receipt of any such report, the Magistrate shall, except where the offence has been compounded, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

59. Forest produce tools, etc., liable to confiscation. — (1) All timber or forest produce which is not the property of Government and In respect of which a forest offence has been committed, and all tools, ropes, chains, boats, vehicles and cattle used in committing any forest offence, shall be liable to confiscation¹⁹[unless an order of confiscation has already been passed In respect thereof under Sec. 56].

(2) Such" confiscation may be In addition to any other punishment provided for such offence.

60. Disposal on conclusion of trial for forest offence of produce in respect of which it was committed. — When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is property of Government or has been confiscated, be taken charge of by or under the

18 *Ins. by Orissa Act 9 of 1983.*

19 *Added by Ibid.*

authority of the Divisional Forest Officer, and in any other case, may be disposed of in such manner as the Court may direct.

61. Procedure when offender not known, or cannot be found. — Where the Magistrate is of opinion that a forest offence was committed, but the offender is not known or cannot be found, he may on an application made in this behalf, order the property in respect of which the offence was committed and which was seized to be confiscated and taken possession of by or under the authority of the Divisional Forest Officer or to be made over to any person whom the Magistrate considers to be entitled to the same :

Provided that before making any such order, the Magistrate shall cause a notice of any application made under this section to be served upon any person who. he has reason to believe is interested in the property seized, or shall publish such notice in such manner as he thinks fit:

Provided further that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person, if any, claiming any right thereto, and the evidence if any, which he may produce in support of his claim.

62. Procedure as to perishable property seized under Sec. 56. — The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under Sec. 56 which is subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold :

Provided that if in the opinion of the officer seizing such property, it is not possible to obtain the orders of the Magistrate in time, such officer may sell the property, remit the sale proceeds to the nearest Government treasury and make a report to the Magistrate and thereupon the Magistrate shall take such measures as may be necessary for the trial of the accused:

Provided further that no officer below the rank of a Range Officer shall have power to dispose of property under the preceding proviso.

63. Appeal from orders under Sees. 59, 60 or 61.—The officer who made the seizure under Sec. 56 or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under Sec. 59, Sec. 60 or Sec. 61, prefer an appeal to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

64. Property when to vest in Government.—²⁰[(1)] When an order for the confiscation of any property has been passed under Sec, 59 or Sec. 61, as the case may be, and the period limited by Sec. 63 for filing an appeal from such order has elapsed and no such appeal has been preferred or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

²¹[(2) When an order of confiscation of any property passed under Sec. 56 has become final under that section in respect of the whole or any portion of the property,

20 *Re-numbered by Orissa Act 9 of 1983.*

21 *Ins. by ibid.*

such property or the portion thereof, as the case may be, shall vest in the State Government free from encumbrances.]

²²[**64-A. Confiscation to be no bar to imposition of other penalty.**—An order of confiscation made under Sec. 56 shall not act as a bar to the imposition of any other penalty to which the offender is liable under this Act or the rules made thereunder].

65. Saving of power to release property seized. - Nothing in this Act shall be deemed to prevent the Divisional Forest Officer from directing at any time the immediate release of any property seized under Sec.56 and the withdrawal of any charge made in respect of such property in accordance with the provisions of Sec. 494 of the Code of Criminal Procedure, 1898 (5 of 1898)²³:

Provided that where a report has been made to the Magistrate of the property seized under Sec.56, the Divisional Forest Officer shall not release the property without the consent in writing of such Magistrate if a case is pending before him, and in other cases, without previous intimation to him.

66. Punishment for wrongful Seizure.- Any Forest Officer or Police Officer who vexatiously or frivolously seizes any property on pretence of seizing property liable to confiscation under this Act or vexatiously or frivolously arrest any person under Sec. 68 shall be punishable with imprisonment for a term which may extend to one year, ²⁴[and with fine] which may extend to one thousand rupees, ²⁵[* * *].

67. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.—Whoever, with intent to cause damage or injury to the public or to any person or to cause wrongful gain as defined in the Indian Penal Code—

- (a) knowingly counterfeits or unlawfully affixes upon any timber or standing trees a mark used by Forest Officers to indicate that such timber or tree is the property of Government or of some person, or that it may lawfully be cut or removed by some person; or
- (b) alters, defaces or obliterates any such mark placed on a tree or, on timber by or under the authority of Forest Officer; or
- (c) alters, moves, destroys or defaces any boundary mark of any forest or waste land to which the provisions of this Act are applied;

shall be punishable with imprisonment for a term which may extend to three years and with fine.

68. Powers to arrest without warrant.- (1) Any Forest Officer or Police Officer may, without orders from a Magistrate and without a warrant, arrest and detain in custody officer knows or has reason to believe that such a person is committing or has committed any forest offence or if such person refuses to give his name and residence, or gives a name or residence which there is reason to believe to be false or there is reason to believe that he will abscond.

(2) Every person arrested and detained in custody under this section shall be informed, as soon as may be, of the grounds for such arrest and detention and shall be

22 *Ins. by ibid.*

23 *See now Criminal Procedure Code, 1973 (1 of 1974).*

24 *Sub. by Orissa Act 9 of 1983. for the word, "or with fine".*

25 *Deleted by ibid.*

produced before the nearest Magistrate within a period without the authority of a Magistrate.

69. Power to release on a bond a person arrested.-Any Forest Officer of a rank not inferior to that of a Range Officer, who or whose subordinate, has arrested any person under the provisions of Sec. 68, may release such person on his executing a bond to appear, except when the offence is non-bailable, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer-in-charge of the concerned police-station.

70. Power to prevent commission of, offence.- Every Forest Officer and Police shall preventing and may interpose for the purpose of preventing the commission of any forest offence.

71. Power to try offences summarily.-Any Magistrate of the First Class specially empowered in this behalf by the State Government may try summarily under the Code of Criminal Procedure, 1898 (5 of 1898),²⁶ any forest offence punishable with imprisonment for a term not exceeding one year, or with fine not exceeding one thousand rupees, or with both.

72. Power to compound offences.-(1) Any Forest Officer specially empowered in this behalf by the State Government may accept as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed²⁷ [any forest offence other than an offence under Sec. 66 or Sec. 67 or an offence in committing which a vehicle has been used]-

(i) a sum of money not exceeding fifty rupees where such offence is of a trivial nature and involves forest produce the market value of which does not exceed twenty-five rupees;

(ii) a sum of money which shall not in any case be less than the market value of the forest produce, or more than four times such value as estimated by such Forest Officer, in addition to the market value of the forest produce, where such offence involves any forest produce which in the opinion of the Forest Officer may be released;

(iii) a sum of money which shall not in any case be less than the market value of the forest produce or more than four times such value as estimated by such Forest Officer, where such offence involves forest produce which in the opinion of the Forest Officer should be retained by the Government:

²⁸[Provided that no such offence as is referred to in Clause (ii) and Cl. (iii) shall be compounded if the market value of the forest produce involved exceeds one hundred rupees].

(2) On receipt of the sum of money referred to in sub-section (1) by such officer-

(i) the accused person, if in custody, shall be discouraged;

(ii) the property seized shall, if it is not to be retained, be released; and

(iii) no further proceedings shall be taken against such person or property.

73. Presumption that forest produce belongs to Government.— When in any proceedings taken under this Act, or in consequence of anything done under this Act,

26 See now Criminal Procedure Code. 1973 (1 of 1974).

27 Subs, by Orissa Act 9 of 1983.

28 Added by Orissa Act 9 of 1983.

a question arises as to whether any forest produce is the property of Government, such produce shall be presumed to be the property of Government until the contrary is proved.

²⁹[73-A. **Presumption as to removal and transportation of forest produce.** Any person found in possession of any forest produce within the limits of nay reserved forest shall, until the contrary is proved, be presumed to be guilty of removing, or as the case may be, transporting such forest produce from the reserved forest without authority.

74. Operation of other laws not barred.—Nothing in this Act shall be deemed to bar the prosecution of any person under any other law for any act or omission which constitutes a forest offence or from being liable under such other law to any higher punishment or penalty than that provided under this Act or the rules thereunder :

Provided that no person shall be prosecuted and punished for the same offence more than once.

CHAPTER IX Cattle Trespass

75. Cattle Trespass Act, 1871 to apply.—Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of Sec. 11 of the Cattle Trespass Act, 1871 (1 of 1871), and may be seized and impounded as such by any Forest Officer or Police Officer.

76. Power to alter fines fixed under the Cattle Trespass Act, 1871.—The State Government may, by notification, direct that, in lieu of the fines fixed under Sec. 12 of the CattleTrespass Act, 1871 (1 of 1871), there shall be levied for each head of cattle impounded under Sec. 75 such fines as they ^ink fit, but not exceeding the following, that is to say,—

| | | |
|---|-----|--------------|
| For each elephant | ... | Fifty rupees |
| For each buffalo or camel | ... | Ten rupees |
| For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer. | ... | Five rupees |
| For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid. | ... | Two rupees |

CHAPTER X Of Forest Officers

77. State Government may invest Forest Officers with certain powers.—(1) The State Government may invest any Forest Officer with all or any of the following powers, that is to say—

- (a) power to enter upon any land and to survey, demarcate and prepare a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and and the

²⁹ *Ibid.*

- production of documents and material objects;
- (c) powers to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898)³⁰; and
 - (d) powers to hold an inquiry into forest offences, and in the course of such inquiry to receive and record evidence.

(2) Any evidence recorded under Cl. (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

78. Forest Officer deemed to be public servants.—All Forest Officers shall be deemed to be—

- (a) public servants within the meaning of the Indian Penal Code (45 of 1860),
- (b) Police Officers for execution of search warrants issued in exercise of powers conferred under Cl. (c) of sub-section (1) of Sec. 77.

79. Indemnity for acts done in good faith.—No suit shall lie against any public servant for anything done by him in good faith under this Act.

80. Forest Officers not to trade.—Except with the permission in writing of the State Government no Forest Officer shall as principal or agent, trade in timber or other forest produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the State.

CHAPTER XI **Miscellaneous**

81. Special provision for reserved forests in the merged territories.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, any forest land or waste land in the merged territories, which had been recognised by the Ruler of any merged State immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for the time being in force or which has been dealt with as such in any administrative report or in accordance with any working plan, or register maintained and acted upon immediately before the said date and has been continued to be so dealt with thereafter, shall be deemed to be reserved forests for the purposes of this Act.

(2) In the absence of any rule, order or notification under this Act, applicable to the area in question, any law, custom, rule, regulation, order or notification mentioned in sub-section (1) shall notwithstanding, be deemed to, be validly in force as if the same had the force and effect of rules, orders and notifications made under the provisions of this Act and shall continue to so remain in force until superseded, altered or modified in accordance therewith.

(3) No report, working plan, or register as aforesaid or any entry therein shall be questioned in any Court of law provided that the State Government have duly certified that such report, working plan, or register had been prepared under the authority of the said Ruler before the date of merger and has been under the authority of the State Government continued to be recognised, maintained or acted upon thereafter.

³⁰ See now *Criminal Procedure Code, 1973 (1 of 1974)*.

(4) Forests recognised in the merged territories, as *khasra* forests village forests or protected forests, or forests other than reserved forests by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of sub-sections (2) and (3) shall *mutatis mutandis* apply.

Explanation I.—"Working plan" includes any plan, scheme project, maps, drawings and lay-outs prepared for the purpose of carrying out the operations in course of the working and management of forests.

Explanation II.—"Ruler" includes the Darbar administration prior to the date of the merger and "State Government" includes the successor Governments after the said date.

82. Additional powers to make rules.—(1) The State Government may make rules—

- (a) to prescribe and limit the powers and duties of any Forest Officer under this Act;
- (b) to regulate the rewards to be paid to officers and informants out of the proceeds of fines and confiscations under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) generally, to carry out the provisions of this Act.

(2) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period, the State Legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form so, however, that such modifications shall be without prejudice to the validity of anything previously done under the rules.

83. Penalties for offences not otherwise provided for.—Any person contravening any provision of this Act or the rules made thereunder for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to one thousand rupees, or with both.

84. Persons bound to assist Forest Officers and Police Officers and duties of such officers.—(1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce or to cut and remove timber from or to pasture cattle in, such forest and every person who is employed by the Government or who receives emoluments from the Government for services to be performed to the community, shall be bound to furnish with due dispatch to the nearest Forest Officer or Police Officer any information he may possess respecting the commission, or the intention to commit any forest offence, and shall forthwith take steps, whether so required by any Forest Officer or Police Officer or not,-

- (a) to extinguish any forest fire in such forest of which he has knowledge or information; and
- (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest; and shall assist any Forest Officer or Police Officer demanding his aid:
 - (i) in preventing the commission in such forest of any forest offence; and

- (ii) when there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender.
- (2) Any person who, being found so to do, without lawful excuse, fails-
- (a) to furnish without unnecessary delay to the nearest Forest Officer or Police Officer any information as required by sub-section (1);
 - (b) to take steps as required by sub-section (1) to extinguish any forest fire in a reserved or protected forest;
 - (c) to prevent, as required by sub-section (1) any fire in the vicinity of such forest from spreading to such forest; or
 - (d) to assist any Forest Officer or Police Officer demanding his aid in preventing the commission in such forest of any forest fence, or when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;
- shall be punishable with fine which may extend to two hundred rupees.
- (3) On receipt of any such information as is referred to in sub-section (1) the Forest Officer or Police Officer, as the case may be, shall forthwith take such as may be appropriate in the circumstances.

85. Punishment for abetment of forest offences.—Whoever abets the commission of a forest offence shall be punished with the punishment provided for the offence.

86. Failure to perform service for which a share in produce of Government forest is enjoyed.- If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietar right to any part of the forest produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the State Government being satisfied that such service is not being duly performed:

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service have been heard by any officer duly appointed in that behalf by the State Government.

87. Recovery of money due to Government.—All money, other than fines, payable to the State Government under this Act, or the rules, or on account of timber or other forest produce or of expenses incurred in the execution of this Act in respect of timber or other forest produce, or under any contract relating to timber and other forest produce including any sum recoverable thereunder for the breach thereof, or in consequence of its cancellation, or under the terms of a notice relating to the sale of timber or other forest produce by auction or by invitation of tenders, issued by or under the authority of a Forest Officer and all compensation awarded to the State Government under this Act, may, if not paid when due, be recovered, as if it were an arrear of public demand.

88. Lien on forest produce for such money.—(1) When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest Officer until such amount has been paid.

(2) If such money is not paid when due, the Forest Officer may order such

produce be confiscated and thereupon he may sell such produce by public auction or by calling tenders.

(3) The proceeds of the sale as aforesaid shall be applied first in discharging the aforesaid dues and the balance of the dues, if any, shall be recovered, as if it were an arrear of public demand.

89. Recovery of penalties due under bond.—When any person in accordance with any provisions of this Act, or in compliance with any rule, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his employees and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach, of the conditions thereof may, notwithstanding anything in Sec. 74 of the Indian Contract Act, 1872 (9 of 1872), be recovered from him in case of such breach as if it were an arrear of public demand.

90. Power of Government to apply the provisions of the Act to certain land of Government or local authority.—The State Government may by notification declare that any of the provisions of this Act shall apply to any land on the banks of canals or the sides of roads which are the property of the State Government or a local authority and thereupon such provisions shall apply to such lands accordingly.

91. Repeal and savings.—The Indian Forest Act, 1927 (16 of 1927) and the Madras Forest Act 1882 (Madras Act 5 of 1882) (hereinafter referred to as the said Acts) in their application to the State of Orissa are hereby repealed :
Provided that—

- (a) any forest or land declared or deemed to be a reserved forest or protected forest or village forest under any of the said Acts shall be deemed to be a reserved forest, protected forest or, as the case may be, village forest under this Act; and
- (b) all rules and orders made, notifications and notices issued, licences, passes and permits granted, fees levied, imposed or assessed, proceedings instituted and all actions taken and things done under any of the said Acts shall be deemed to have been respectively made, issued, granted, levied, imposed or assessed, instituted, taken or done under this Act and shall continue in force until new provisions are made under this Act.

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